

Article XII. Closing Protection Letters

Pursuant to Iowa Code Section 16.93 and 265 IAC 9.22(16), the Title Guaranty Division (Division) may issue Closing Protection Letters to persons to whom a Division Commitment and Certificate is to be issued. The letters may indemnify lenders and owners against loss of settlement funds due to the acts or omissions of division closers, including theft of settlement funds and failure to comply with written closing instructions. Only Title Guaranty Participating Attorneys and Abstractors are eligible for designation as Division Closers.

Section 12.01 *Requirements for Division Closers*

To qualify as a Division Closer, you must meet the following requirements:

- Applicant must be a participating abstractor or participating attorney and in good standing with the Division
- Applicant must be approved by the Division to issue Division Commitments, Certificates, and Endorsements
- Applicant shall constantly keep in force errors and omissions insurance in the amount of \$500,000.00 per claim (up to \$10,000.00 deductible) and a total aggregate annual limit of \$1,000,000.00. The policy shall be endorsed to include the Division as a certificate holder and must contain provisions such that the division is immediately notified by the insurance carrier of any lapse in or termination of coverage.
- Applicant, including its partners, officers, members, employees, and spouses thereof, must consent to credit and criminal background investigations as deemed necessary by the Division. The Applicant must fully cooperate with the Division to obtain consents and waivers as required to conduct such investigations. If the Applicant or its partners, officers, members or employees has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense(s), or of any crime involving moral turpitude in a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction, the Division may deny approval of such applicant. For purposes of this section, a conviction includes a guilty plea, deferred judgment, from the time of entry of the deferred judgment until the time defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. The Applicant must agree to reimburse the Division for costs associated with credit and criminal background investigations. The Division maintains the right to conduct these investigations as often as it deems necessary.
- Applicant must attend one or more Division training sessions, as required by the Division.
- Applicant, upon approval by the Division, must execute an Indemnity Agreement in favor of the Division. See the Form contained herein.
- Before any Division Closing, the Division Closer must issue a Title Guaranty Commitment.

Section 12.02 *Division Escrow Accounts*

(a) Introduction

Division Closers conducting Division Closings utilizing accounts regulated by the Lawyer Trust Account Commission (IOLTA) shall be subject to the Iowa Supreme Court's rules and regulations concerning the operation of trust accounts. The remainder of this Section shall not apply to Division Closers utilizing IOLTA accounts for Division Closings.

When Division Closers receive and disburse proceeds for Division Closings using non-IOLTA accounts, a Division Escrow Account is used to make disbursements for closings for which the Division Closer is closing under protection of a Title Guaranty Closing Protection Letter. When a closing takes place and money is deposited with a Division Closer to fund the transaction, payment of the proceeds to the seller, loan payoffs, recording fees, closing fees, Title Guaranty premiums, and other related charges are to be paid from the account.

(b) Establishing a Division Escrow Account

Division Closers who operate non-IOLTA escrow accounts shall provide an Irrevocable Letter of Direction to the financial institution where the account is located. See Form contained herein. This letter will be directed to the financial institution at which the account is established, authorizing the bank to send Title Guaranty monthly bank statements, and copies of any relevant account information, as solely determined by Title Guaranty. Title Guaranty may, for cause, terminate or suspend a Title Guaranty closer's authority to maintain the account at any time.

When a Division Escrow Account is established, the closer must report the account number, the bank name and address, and the closer's name and number to Title Guaranty. The Division Closer is responsible for the proper conduct, maintenance, and reconciliation of the account. Title Guaranty will conduct periodic audits and will verify the reconciliation of the account.

Disbursements may be made out of a Division Escrow Account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

1. Cash;

We discourage dealing with cash. When a party to a real estate transaction deposits cash, the closer must prepare a receipt, a copy of which is to remain with the file, containing the following information:

- a. The name of the Division Closer's office.
- b. Title Guaranty participant number.

- c. The date and time the cash was received.
 - d. The amount of money received.
 - e. The name, address, and telephone number of the person who paid the money.
2. Wire transfers such that the funds are unconditionally received by the Division Closer's depository;
3. Checks, drafts, negotiable orders of withdrawal, money orders and any other item that has been finally paid before any disbursements;
4. A depository check, including a certified check, governed by the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. Sec. 4001, et seq., or
5. Credit transfers through the Automated Clearing House (ACH) which have been deemed available by the depository institution receiving the credits. The credits must conform to the operating rules set forth by the National Automated Clearing House Association (NACHA).

(c) Division Escrow Account Expenses

In addition to the money collected to fund a Division Closing, the only money that should be deposited in the account is money intended to cover check charges or bank fees. **Personal use of the Escrow Account is strictly forbidden.** All activity including bank service charges and check charges must be recorded in the closer's records of the account.

(d) Reconciliation

1. Monthly reconciliation of the Division Escrow Account is mandatory. Each month, the account must be reconciled with the bank statement. A Division Closer must immediately notify the Division on becoming aware of any problem with the account.
2. Failure to maintain monthly reconciliations will result in loss of privilege to conduct Division Closings

(e) Escrow Funds and Title Indemnities

There are several reasons why funds are held in escrow after a closing. Completion of work, payment of taxes, and title indemnities are just a few of the reasons. Whenever funds are held in escrow after a closing, there must be a written escrow agreement detailing the reason the funds were held, the time period during which the funds are to be held, and the parties necessary to authorize disbursement of the funds. The Division has standard form agreements for most situations, and Division attorneys will be available to assist in drafting an agreement for any escrow involving special circumstances.

(f) Recordkeeping Requirements

The records of a Division Escrow Account must be kept up to date at all times, so that they may be inspected by the Division. The Division reserves the right to audit this account at any time, and can be expected to do so under any of the following circumstances:

- 1. If a check is returned for non-sufficient funds (NSF).**
- 2. When a Division Closer terminates his/her relationship with the Division.**
- 3. Whenever a Division Closer has not followed Division procedures.**

Upon request, Division Closers must immediately submit account information, bank statements, receipts, checks and other information upon request of the Division for review.

All records relating to this account must be kept for ten (10) years beyond the current year.

Section 12.03 *Commitment and Certificate Issuance Procedures*

(a) Commitments

1. A Commitment must be issued prior to a Division Closing by the Division Closer.
2. All Commitments to be closed under protection of a Title Guaranty Closing Protection Letter must include the Gap Endorsement.
3. The effective date on an un-expired Commitment may be updated at closing with a Pre-Closing Search Certification.

(b) Lender Certificates

Division Closers must issue lender certificates within thirty (30) days after closing, unless the lender specifies a shorter time period, even though the abstract is not yet certified through the guaranteed mortgage recording, and releases and other curative documents are not yet of record. In order to comply with this requirement, Division Closers must use the Rapid Certificate Program to guaranty over just-paid prior mortgages not yet released of record. The Title Guaranty Division encourages post-closing abstract continuations. However, it shall be up to the Division Closer to determine whether a post-closing abstract continuation is performed, a lien search, or some other method is used to assure the deed, mortgage, and other curative documents have in fact been filed of record.

(c) Owner Certificates

Owner Certificates may be issued in same manner as Lender Certificates described above. Owner Certificates may be issued from a purchase transaction and cannot be ordered in a refinance transaction.

(d) Incorrect Certificates and Endorsements

1. For purposes of this Section, a Certificate is considered to be issued when it is properly completed and delivered to the guaranteed with all Endorsements specifically required in the closing instructions, escrow agreement, or other documents.
2. If the Division Closer fails to issue an Endorsement that is required by a Guaranteed after being notified of the requirement, and the Division then issues the Endorsement, the Division reserves the right to collect a ten dollar (\$10.00) charge from the Division Closer for preparing and delivering the Endorsement. If Title Guaranty corrects typographical or other errors on Certificates or Endorsements prepared by the Division Closer, the Division reserves the right to collect a ten dollar (\$10.00) charge from the Division Closer for preparation and delivery of each corrected Certificate or Endorsement.

Section 12.04 *Conflicts of Interest*

A Division Closer shall not issue a Division Certificate or Commitment nor close a transaction in which the Division Closer has a direct or indirect interest unless the Division provides written approval to do so.

A Division Closer who issues a Division Commitment or Certificate and closes on land in which the Division Closer has a direct or indirect interest without first obtaining the approval of the Division shall, in addition to other rights and remedies of the Division, be liable to the Division for any loss or damage suffered by the Division under the Commitment or Certificate. In addition, the Division shall not be liable under the Commitment or Certificate to the Division Closer or anyone who succeeds to the Division Closer's interest in the land by operation of law as distinguished from purchase, including but not limited to, heirs, distributes, devisees, survivors, personal representative, next of kin, or corporate or fiduciary successors. An "indirect interest" for purposes of this Section includes, but is not limited to, an interest held by the Division Closer in a trust, estate, partnership, or corporation, and any interest held by the Division Closer's spouse, children, grandchildren, or parents in the land or in a trust, estate, partnership, or corporation. The requirements of this Section shall not apply to interests held by the Division Closer or his or her spouse, children, grandchildren, or parents in a representative capacity or in a publicly held corporation.

Section 12.05 *Audit Procedures*

(a) Office Audits

The Division may, with or without notice to a Division Closer, audit the Division Closer at the Division Closer's office. This audit may include, but need not be limited to, review of the Division Closer's escrow account records, preliminary and final opinions, Commitment and Certificate issuance, copies of updated abstracts, audit of serialized forms, and verification of the Division Closer's compliance with Division rules and regulations, and any other instructions given by Division.

(b) Division Escrow Account Audits

The Division may, with or without notice to a Division Closer, audit the Division Closer's Division escrow account. This provision shall not apply to Division Closers utilizing accounts regulated by the Lawyer Trust Account Commission.

(c) Remedies

In addition to other rights and remedies of the Division, the remedies set forth in Administrative Rule 265-9.23 shall apply to a Division Closer's violation of this Section.

Section 12.06 *Closing Procedures*

(a) Underwriting Determinations

The Division Closer, or participating attorney in cases where the Division Closer is a participating abstractor, shall make all underwriting determinations prior to or at the closing. For purposes of this Section, the term “underwriting determinations” includes, but is not limited to, guaranteeing public access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the Commitment or other sources of title information. A Division Closer or participating attorney who causes or allows an erroneous underwriting determination to be made shall be liable to Title Guaranty for loss or damage that Title Guaranty may suffer as a result of the erroneous underwriting determination. A Division Closer or participating attorney shall make all underwriting determinations utilizing the following when issuing Division Commitments and Certificates:

1. Applicable state and federal laws;
2. Generally accepted and prudent title examination methods such as the most recent edition of the Iowa Land Title Standards of the Iowa State Bar Association; and
3. Procedures implemented by the Division and outlined in the various manuals and other materials provided by the Division.

Any underwriting determination about which there may be a bona fide difference of opinion among local attorneys and that is not specifically covered by manuals and materials provided by the Division shall be approved by Division legal staff.

(b) Title Documentation

A Division Closer shall make arrangements to obtain all applicable title documentation including but not limited to the following documents:

1. Composite Mortgage Affidavits (properly executed by all sellers and buyers (or current titleholders));
2. Name Affidavits;
3. Documents to be recorded; and
4. Current pay-off letters and corresponding payoff checks.

The Division Closer shall be liable to the Division for additional interest or late penalties or other loss or damage suffered by the Division resulting from the Division Closer’s failure to obtain and competently act upon these documents in a timely manner.

(c) Forms

A Division Closer may not alter any form supplied by the Division, or use a form supplied by another person or entity to bind Title Guaranty, or otherwise bind the Division to liability with a form, other writing or representation not supplied or authorized by the Division.

(d) Post-Closing

1. Division Closers shall follow-up and see that valid releases are filed for all mortgages paid at Division Closings, in accordance with the Rapid Certificate Program. *See Section IX of this Manual.* If the Division Closer is unable to secure a release within 6 months of closing, the Division Closer shall use the Mortgage Release Program. The Division will pay the release filing fee when the Rapid Certificate Program is used by Division Closers.
2. Division Closers shall take remedial action on any title defects discovered after the closing and obtain any curative documents necessary to clear title. Division Closers shall promptly respond to and assist the Division in clearing title defects.

(e) Premiums

Division Closers must submit premium payments to the Division within 30 days of closing.

Section 12.07 ***Renewal of Division Closer Status***

The Division shall send out annual Renewal Applications to each Division Closer to confirm qualifying status. If the Application is not returned within the allowed time period, the participant's designation as Division Closer may be immediately terminated.

Section 12.08 *Forms*



IRREVOCABLE LETTER OF DIRECTION TO FINANCIAL INSTITUTION

To: _____
(Financial institution where Division Escrow Account is held)

From: _____
(Division Closer / account holder {Print name exactly as it appears on account})

Date: _____

Re: Authorization to allow the Title Guaranty Division to access and be
Provided Information Regarding Account Number _____

I/We, the undersigned account holder(s) do hereby authorize and direct
_____ (Financial Institution) to release any and all information
pertaining to account # _____ to the Title Guaranty Division (Division) any
time the Division provides written request therefore.

_____ (Financial Institution) is also directed to send
notice to the Division immediately if this account is closed or if the account becomes
overdrawn. Notice should be sent to: Title Guaranty Division, (new address).

* _____

* _____

* _____

* _____

* Must be signed by all parties that are signatories on the account.
This Letter of Direction cannot be cancelled or revoked.



Closing Protection Letter Indemnity Agreement

This Agreement is made the ____ day of _____, 2006 by and between _____ (DIVISION CLOSER) (“Indemnitor”) and the Title Guaranty Division (“Division”) for all acts and omissions by Indemnitor.

The Division may agree to issue Closing Protection Letters to lenders at the request of the Indemnitor;

The Division has agreed to assume liability under Closing Protection Letters at the request of Indemnitor, but only on the express condition that Indemnitor execute this Indemnity Agreement, and in reliance on the express warranty of Indemnitor that Indemnitor has such a material interest in the issuance of the Closing Protection Letters as to empower Indemnitor to enter into and be bound by this Indemnity Agreement.

The parties agree as follows:

1. Indemnification by Indemnitor. Indemnitor shall indemnify the Division against any and all liability, loss, damage, or expense of any kind whatsoever that the Division may suffer in consequence of claims under the Closing Protection Letters or any renewal thereof or substitute therefore and in connection with the enforcement of this Indemnity Agreement, including but not limited to, all attorneys' fees, collection fees, investigation fees, court costs, and all other costs and expenses, whether direct or indirect, incurred in the payment, compromise, attempted compromise, trial, appeal, or arbitration of claims arising under the Closing Protection Letters, incurred in attempts to

recover losses sustained on claims arising under the Closing Protection Letters or incurred in the enforcement of this Indemnity Agreement. The indemnity provided for herein applies only to Closing Protection Letters wherein Indemnitor is the designated division closer.

2. Payment of Claims and Defense of Actions. It shall be the sole right and responsibility of the Division to determine in good faith whether claims on which the Division may be or become liable under the Closing Protection Letters shall be paid, compromised, defended, tried, appealed, or arbitrated, and the amount, if any, to be paid. The Indemnitor is under no obligation to defend any actions or proceedings brought against the Division in connection with the subject matter of this Agreement; provided, however, that nothing contained herein shall be so construed as to relieve Indemnitor of any liability otherwise imposed by this Indemnity Agreement or by law with respect to costs and expenses incurred by the Division in good faith in connection with such actions or proceedings.

3. Reimbursement By Indemnitor. Indemnitor shall pay to the Division all sums due under this Indemnity Agreement within thirty (30) days after demand therefore is made by the Division. A demand under the preceding sentence shall be made in writing and served upon the Indemnitor either (a) personally, or (b) by sending the demand by United States first class mail, postage prepaid to the Indemnitor at (insert address) in which event the demand shall be deemed to have been served at the time it was mailed.

4. Severability. If any clause, phrase, provision, or portion of this Indemnity Agreement or the application thereof to any person or circumstances shall be invalid, or

Insert from Title Guaranty Manual

unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Indemnity Agreement.

5. Miscellaneous.

(a) The Division may make or consent to any amendment to the Closing Protection Letters, including, but not limited to, the issuance of a substitute therefore, or renewal thereof.

(b) This indemnity Agreement shall in no event be so construed as to require the Division to issue any Closing Protection Letter, nor any substitution, renewal, or alterations thereof, nor shall it be so construed as to deprive the Division of the right to withdraw any previously issued Closing Protection Letter at any time.

(c) Nothing herein shall be so construed as to require the Division to exhaust any remedies it may have against any other party as a pre-condition to making a demand under or bringing suit on this Indemnity Agreement.

(d) Section or paragraph headings are inserted herein only for convenience or reference and shall not be considered in the construction of any provision hereof.

6. Binding Effect. The terms of this Indemnity Agreement shall bind and inure to the benefit of the parties and their heirs, legal representatives, successors, and assigns.

TITLE GUARANTY DIVISION
A DIVISION OF THE IOWA FINANCE AUTHORITY

BY: _____(Title Guaranty Director)

BY: _____
AUTHORIZED SIGNATURE FOR PARTICIPATING ATTORNEY/ABTRACTOR
[PLACE PROPER ACKNOWLEDGEMENT HERE]